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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2007

Coram

The Hon'ble Mrs. Justice PRABHA SRIDEVAN

Appeal No.73 of 2007
and
M.P.Nos.1 and 2 of 2007

Vasudevan .. Appellant/Defendant.

Vs

1.M.Thirumudi
2.M.Deenadayalan .. Respondents/Plaintiff.

Appeal preferred against the judgment and decree of the Additional District Court, Pondicherry at Karaikal dated 31.08.2006 made in O.S.No.42 of 2005.

For Appellant .. Mr.K.Kannan for Mr.R.Sunil Kumar

For Respondents .. Mr.AR.L.Sundaresan, Sr. Counsel for M/s.Sai, Bharath and Ilan

JUDGMENT

When the applications for stay were stoutly objected to, the main appeal is taken up for disposal, by consent.

2.This appeal arises out of a suit for declaration that the respondents are life estate holders, entitled to be in possession and for recovery of possession. The suit was decreed and the appeal is filed by the sole defendant. The factual background of the case is as follows:

There was one Sabapathy Nadar. He had three sons Narayanan, Arumugam and Muthusamy. Narayanan has no issues. He executed a Will on 16.06.1952, under which he bequeathed his properties to the sons of his two brothers Arumugam and Muthusamy mentioned above for their life time, to be taken by their sons absolutely thereafter. Arumugam had two sons – Ayyenperumal and Srinivasan. Muthusamy had two sons – Thirumudi and Deenadayalan. These two are the respondents herein, who have filed the suit. Ayyenperumal's son Vasudevan is the appellant.

Earlier, Ayyenperumal, the father of the appellant filed a suit for partition in O.S.No.11 of 1975 and also for a declaration that the clause in the Will prohibiting sale, mortgage and exchange is null and void. The preliminary decree for partition was granted and the clause prohibiting sale, mortgage or exchange was also declared as null and void. In the suit, the respondents herein were defendants 2 and 3. The final decree

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proceedings were initiated where the commissioner filed his report that it is not possible to divide the suit property by metes and bounds for peaceful and convenient enjoyment of the parties. Thereafter, the property was brought to sale by public auction. The appellant herein purchased the property at the public auction. The second respondent herein obstructed the execution proceedings and the appellant herein filed application for removal of obstruction. This application was ordered by the learned Subordinate Judge, Karaikal. These are all matters of record.

The sons of the first respondent herein filed O.S.No.3 of 1977 for a declaration that they and the other sons of the second respondent are entitled to possession. In O.S.No.3 of 1977, they have prayed for injunction restraining the appellant herein from interfering with the possession. The appellant resisted the suit by raising a preliminary objection of res judicata. This objection was ruled in favour of the appellant. Against that, appeal was filed, where the issue of res judicata was held against the appellant and the matter was remanded to the trial Court for a decision on merits. Thereafter, the suit was decreed. The appeal filed by the appellant herein was also dismissed. Against that, S.A.No.1382 of 1987 was filed where it was contended by the appellant herein that the vested remainder holders viz., the sons of respondents 1 and 2 are entitled to succeed to the suit house after the life time of the last life estate holder and not before that. The sons of the respondents herein claimed that they were entitled to be in possession right away as per the terms of the Will. It is relevant to note that the respondents herein were party to the proceedings as well.

Learned Judge held that the vested remainder holders can succeed to the property only on the death of the life estate holder and that the recital in the Will that Ayyamperumal and his brothers have to enjoy the house till their life time along with their issues will not help the case of the appellants to reach the conclusion that they are entitled to be in joint possession during the life time of the life estate holders and the judgment and decree of the Courts below were modified to the extent that there will be a declaration in favour of the plaintiffs to the effect that they are entitled to succeed to the suit house along with the other vested remainder holders, including the sixth defendant after the life time of the last life estate holder and the suit was decreed in respect of the declaration only as indicated above and dismissed in other respects. The sixth defendant/appellant shall not alienate, mortgage or encumber the suit house in any manner and maintain the same as it is available at present, to be succeeded by all the vested remainder holders. It is of course open to the sixth defendant/appellant to effect such repairs, if absolutely necessary to maintain the house in good order. This is, in substance, the effect of the judgment in S.A.No.1382 of 1987.

The observation in the second appeal appears to have emboldened the respondents herein to file a suit for declaration that they are life estate holders entitled to be in possession and enjoyment of the suit property. The trial Court came to the conclusion that the above observations in second appeal would amount to declaration of the right of the life estate holders and decreed the suit. Aggrieved by this, the present appeal has been filed.

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3.Learned counsel for the appellant submitted that the judgment in the second appeal is only in recognition of the right of the vested remainder holders viz., the sons of the respondents herein and that the judgment is not to the effect that in spite of the Court auction purchase by the appellant, the respondents are entitled to a declaration that they shall be in possession or to sue for recovery of possession. Learned counsel submits that all the proceedings in the earlier suit in O.S.No.11 of 1975 were in the presence of the respondents herein and they have taken part in the execution proceedings and possession has been delivered and now they cannot try to revive a non-existing right.

4.Learned senior counsel for the respondents would submit that the sale in favour of the appellant is void since it is a transfer of the properties hit by Section 6 of Transfer of Property Act. As per Section 6 (d), all interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. For this purpose, learned counsel relied on Lachhmeshwar Vs. Moti Rani (AIR 1939 Privy Council 157).

5.Neither the judgment in S.A.No.1382 of 1987 nor the above decision nor Section 6 of the Transfer of Property Act will come to the aid of the respondents. Each of the life estate holders viz., the sons of Narayanan's brothers were to take the life estate in the property equally and for this purpose, the father of the appellant sued for partition and there was a declaration of 1/4th share. The share that was declared by the Court could have been only regarding the life estate, to which alone each of the parties was entitled, and since this property, which was the subject matter of the partition was, not capable of division, the property was brought to sale. The respondents herein were party to the proceedings through out. If they had any objections to the sale, that was the juncture when they could have raised their objection. The second respondent herein in fact raised obstructions and his obstruction was directed to be removed. This order has also become final. AIR 1939 Privy Council 157 (cited supra) does not help the respondents. In that case, the party who was granted the life interest, was granted a right to remain in possession of the house and to take the rents. That was the right which was transferred in that case and it is in these circumstances, the Privy Council held that right cannot be alienated. In fact, the devise under which the restricted interest holder derived her right to remain in possession also restricted her right to sell or otherwise alienate the property. That cannot help the respondents herein.

6.The respondents are life estate holders, which life estate has been sold not by way of voluntary transfer, but by the Court auction sale to which they were party to and which proceedings have become final without any challenge thereto. They cannot now claim that they are entitled to be in possession. In the judgment in the earlier second appeal, the sons of the respondents herein claimed that they were entitled to be in possession and this claim was not countenanced by this Court. Their right was postponed till the death of the last life estate holder. The reason why this court did not accept the vested remainder holders' claim for possession was because the right of the life estate holders to remain in possession had been purchased by the appellant herein in Court auction and therefore, this right he continues to have until the death of the last life estate holder, the life estate rights having been transferred to the

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appellant herein under the Court auction. The vested remainders were told that they cannot claim to be in possession. Therefore, the reason for rejecting their claim to be in possession is only because the appellant had purchased that property. Therefore, the judgment in the second appeal in no way states that the life estate holders right still remains untouched for the respondents to make a claim afresh after nearly thirty years. The respondents herein are no doubt the life estate holders under the Will of Narayanan but their interest has been purchased by the appellant. They are not entitled to be in possession and they are not entitled to recovery of possession. The appeal is therefore allowed and the judgment and decree of the trial Court are set aside. No costs. Consequently, connected M.Ps are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mmi

To

1. The Additional District Court,
Pondicherry at Karaikal.

2. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr.R.Sunil Kumar, Advocate SR NO.34791

+ 1 CC To M/s.Sai, Bharath and Ilan, Advocate SR NO.34668

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